

To: Halsey, Ronald H[ronald.halsey@bp.com]
Cc: Sullivan, Julie[sullivan.julie@epa.gov]; Shaffer, Caleb[Shaffer.Caleb@epa.gov]; Brown, Anthony R (RM)[anthony.brown@bp.com]
From: Barton, Dana
Sent: Wed 12/20/2017 10:06:50 PM
Subject: RE: Leviathan: Weather.com: EPA Using Controversial Process to Push Cleanup of America's Most Toxic Sites

Hi Ron,

Thank you for forwarding this, I hadn't seen it.

I hope you all have a wonderful holiday season, too!

Dana

Dana Barton

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From: Halsey, Ronald H [mailto:ronald.halsey@bp.com]

Sent: Wednesday, December 20, 2017 11:06 AM

To: Barton, Dana <Barton.Dana@epa.gov>

Cc: Sullivan, Julie <sullivan.julie@epa.gov>; Shaffer, Caleb <Shaffer.Caleb@epa.gov>; Brown, Anthony R (RM) <anthony.brown@bp.com>

Subject: FW: Leviathan: Weather.com: EPA Using Controversial Process to Push Cleanup of America's Most Toxic Sites

Hi Dana,

I'm assuming you received this article, but just in case you haven't. Interesting reading....

Hope all of you have a wonderful holiday season!

ron

<https://weather.com/science/environment/news/2017-12-19-epa-scott-pruitt-lean-superfund-sites>

EPA Using Controversial Process to Push Cleanup of America's Most Toxic Sites

Superfund Cleanup Process Raises Questions

The EPA's new method of streamlining cleanup at Superfund sites isn't sitting well with some.

At a Glance

- EPA insiders are concerned that the streamlining process called "lean" is a cover for polluting companies.
- The customer in this process isn't who you might think.

The Environmental Protection Agency is hoping a business management system can help accelerate cleanup at toxic waste sites across America, but some agency insiders are worried it might also help polluting companies avoid a full cleanup.

Last summer, EPA Administrator Scott Pruitt hired government efficiency expert Henry Darwinto to instill across the agency a management philosophy called “lean,” pioneered by Toyota to minimize waste on the factory floor.

Arizona Republican Gov. Doug Ducey credits Darwin’s “lean” with transforming his state government by getting it to think of itself as a company focused on its customer.

A training video for Arizona government workers makes clear just who that customer is, and it could raise some eyebrows.

“Let’s say, for example, your job is to write environmental permits,” explains the video’s narrator. “So your widget is a written permit. Who’s your customer? If you think it’s the general public because they benefit from clean air or water you’d be wrong. Who actually needs and uses the permit? It’s the industrial facility that can’t legally operate its business until the permit has been approved.”

Taxpayers might expect agencies such as the EPA to unreservedly safeguard the environment and public health. Nicole Darnall, a professor at Arizona State University’s School of Public Affairs, believes the general public is shortchanged when state or federal agencies view themselves as businesses and the industries they regulate as their customers.

“Government’s mission is bigger than delivering a product at the lowest possible price,” she said. “Investors benefit when more products are sold. However, taxpayers do not always benefit when more environmental permits are issued. Some may, but others may not, especially those with autoimmune or respiratory sensitivities.”

The shift in emphasis toward industry concerns has already surfaced at an open-pit sulphur mine in California called Leviathan. The EPA’s remediation project manager there left the agency last summer after she was told that “lean” principles were going to be instilled at the site, requiring her to curb her demands for more access to data about the extent of the pollution, she said.

“I just felt sick to my stomach,” said the former remediation scientist, Lynda Deschambault, who eventually became one of hundreds of EPA employees accepting early retirement packages this year.

BP, the parent of the company responsible for the cleanup, acknowledged that it had proposed “leaning” Leviathan to the EPA in hopes of accelerating progress there.

It is unclear how extensively or quickly “lean” will be implemented at some 1,300 sites that are part of a cleanup program known informally as Superfund. They were placed in the program because they pose a threat to public health and nature. An EPA official in Region 8, which includes the Rocky Mountains and Great Plains, said, “We anticipate that this will be rolled

down to us next year with some expectations to use 'lean' within the EPA Region 8 Superfund program.” Officials at other regions did not respond to questions about whether there are plans to use “lean” at any of their sites.

The EPA public affairs office repeatedly declined to answer questions for this story. Nor would it provide information or allow interviews of agency employees. Agency officials were approached privately; some agreed to talk on the condition their identities not be disclosed because they do not have permission to speak publicly.

“The No. 1 thing we’re all watching out for is ‘lean’ just a means for them to short circuit health protection,” one employee said.

Darwin didn’t respond to numerous attempts to reach him by email and phone. Under Darwin’s approach, however, the public is viewed as an investor who expects a return on investment in the form of positive outcomes.

During the campaign, President Trump vowed to “get rid of” the EPA in almost every form. By selecting Pruitt as its administrator, Trump put the EPA into the hands of a bitter critic who has sued the agency more than a dozen times. Pruitt’s sympathies for the industries the EPA regulates has highlighted a tension inherent in many government activities: how to keep the public safe without unduly disrupting industry.

Pruitt prefers a softer approach to enforcement than former President Obama. Pruitt prefers to guide violators back into compliance rather than hammering them with investigations and fines. He also is considering shifting some of the agency’s enforcement responsibilities to the states, where thin regulator ranks are already overburdened.

Pruitt has also vowed to jumpstart cleanup at many of the more than 1,300 Superfund sites, which include some of the nation’s most toxic landfills, mines and chemical plants posing an immediate threat to public health and the environment. Cleanup at many has been delayed for decades by sharp disagreements over how clean is clean, litigious arguments that pit the bottom line of corporations against the health and well-being of communities.

The promise of an end to decades-long delays might cause many to cheer, environmentalists included. However, Pruitt’s approach – “lean” management practices designed to streamline the drag on businesses and playing a more direct role himself in settling long-running disputes – may give them pause.



A shift in emphasis toward industry concerns has already surfaced at Leviathan Mine, a Superfund sulphur mine nestled in the bucolic eastern slopes of the Sierra Nevada mountain range about 20 miles south of Lake Tahoe.

(Wikimedia Commons)

For one thing, money won't be a factor in how Pruitt reinvigorates Superfund. The Trump administration wants to cut the program's budget by almost a quarter next year from \$1 billion to \$762 million.

All of this is occurring against the backdrop of the Trump administration's call for the EPA's overall budget to be slashed by 30 percent. The EPA recently announced it would not require mining companies to demonstrate they can pay for the cleanup before digging. And in October, Pruitt vowed to repeal a rule limiting greenhouse-gas emissions from existing power plants, assuring Kentucky coal miners, "The war against coal is over."

These actions have stoked mistrust among stalwarts of environmental protection who believe the EPA is abandoning science in its rush to downsize and deregulate the agency.

"You don't have EPA anymore," said [Rena Steinzor](#), a University of Maryland law professor who helped reauthorize Superfund as an aide to a New Jersey congressman in 1986. "You have an occupied country, like Poland and France in World War II."

But the EPA's new focus on efficiency and streamlining – everything from permits to Superfund sites – has given hope to the industries the EPA regulates.

Jeffrey A. Bolin has been with Michigan-based [Dragun Corporation](#) for 28 of its 29 years. The company was founded in 1988 by the-late James Dragun (rhymes with ray gun) after he left his job as a soil chemist with the EPA "because he thought it was shifting from science to being more of a political arm," according to Bolin.

“Dr. Dragun pushed us that the data and the science drive the decisions and outcomes,” Bolin said. “We’ve been a company that gets in and gets out and lets companies get on with their business. Our clients are the regulated community.”

The EPA’s primary customer is the public, he said, but that industry also is a customer and its needs should be considered, too. “Thus, approval by the EPA is protective of ‘the public’ and serves the ‘other customer’ as well,” he wrote in a follow-up email.

A [2012 report](#) by the consulting firm McKinsey & Company said “lean” techniques can help government agencies eliminate “unnecessary touch points and wait times,” improve coordination and standardize work “to reduce variations in processes and performance.”

Bolin is heartened by Pruitt’s vow to break the impasse at Superfund sites.

“My understanding is that Scott Pruitt will have direct involvement with those sites,” said Bolin.

Under the current system, he added, actual cleanup is delayed until there is a final plan in place, which in many cases takes decades because of litigation, the lengthy regulatory process and the EPA’s tendency to get bogged down in minutiae. The EPA is very “process-obsessed,” he added.

Pruitt’s “direct engagement” can resolve these conflicts, Bolin believes.

“That should be a good thing in the big picture of cleaning up the environment and taking care of the most important exposure to human health and the environment,” he said.

It could also mean picking winners and losers in fierce battles over how far contamination extends from a toxic-waste site; frequency, type and duration of monitoring; and how clean a site ultimately must be before it’s deemed to be clean enough.

“If you get a senior person involved from the agency, you get a compromise and more common-sense thinking to get resolutions,” said Matthew Schroeder, a senior environmental engineer at Dragun. “Having Pruitt involved in the decision-making would bring that to some of these sites on the priority list.”

Earlier this month, Pruitt released a list of 21 toxic waste sites in need of “immediate and intense action.” (The Leviathan Mine in California was not among them.) In announcing [the list](#), the EPA said, “The administrator decided his engagement on these specific sites can facilitate substantial progress in the near-term and move the site closer to completion of cleanup.”

Earlier this year, he created a Superfund task force to streamline the cleanup process.

“I have charged the Superfund Task Force staff to immediately and intently develop plans for each of these sites to ensure they are thoughtfully addressed with urgency,” Pruitt said in a statement.

After releasing a 34-page report with recommendations in July, the task force was turned over to

Henry Darwin's wife, Veronica Garcia, whom Pruitt also hired. Since then, she has been schooling the task force in principles of "lean" management, according to sources within the agency.

One of those Superfund sites is the Leviathan Mine, a 250-acre, open-pit sulfur mine nestled in the bucolic eastern slopes of the Sierra Nevada mountain range about 20 miles south of Lake Tahoe. Mining activities there date to 1863 but ceased in the early 1960s after sulfuric acid oozing from the pit caused substantial ecological damage downstream to tribal and federal lands in Nevada, including recurring fish kills.

In 1977, Atlantic Richfield Company bought the mine. It's since been turned over to the state of California. But because of ARCO's prior ownership, it is liable for the cleanup costs of Leviathan. In 2000, BP bought ARCO, acquiring the responsibility for Leviathan as part of the deal. That same year, the EPA made Leviathan a Superfund site, partly at the behest of the Washoe tribe, whose lands in Nevada were contaminated by acid runoff from the mine.

For the past 17 years, Atlantic Richfield – under BP's management – has been underwriting much of the cleanup effort at Leviathan. Water treatment systems have been installed, reducing much of the acid runoff. But the systems can't operate during winter because Leviathan is at an elevation of 7,200 feet and subject to the cold and snow. Heavy rain events and snow melts can overwhelm the systems, resulting in sulfuric acid runoff.

Meanwhile, EPA, the tribe and Atlantic Richfield have been haggling over a long-term plan to manage the pollution generated by the site. After 17 years, they are still two years away from coming up with a permanent plan.

A key issue in the final cleanup plan is how far the contamination extends downstream from the mine. The farther it extends, the costlier the ultimate cleanup will be for Atlantic Richfield.

In 2014, the EPA assigned Lynda Deschambault, a chemist with a strong commitment to environmental protection, to be the remediation site manager at Leviathan. Science and a love of nature have guided her work, she said, citing the Great Law of the Iroquois Confederacy, "In our every deliberation we must consider the impact of our decisions on the next seven generation."

When she took over the site, she was a 17-year veteran of the EPA. Before that, she had spent 17 years as a chemist and lab director in the environmental laboratory industry.

As part of her duties, she organized meetings with stakeholders, such as the Washoe tribe, and pressed ARCO to share environmental data it was gathering to ensure testing was being done in places of concern to the tribe and other local stakeholders.

This past June, Deschambault went on vacation. When she returned she found her professional world turned upside down, she said, explaining that her supervisor at EPA's southwestern regional offices told her ARCO had asked the EPA to "lean" cleanup activities at Leviathan.

As part of the "lean" process, her supervisor wanted her to curtail her efforts to get Atlantic

Richfield to do additional testing, she said. The supervisor urged her to stop scheduling meetings and requesting information from ARCO workers, she added, and quizzed about her willingness to be more conciliatory toward Atlantic Richfield with an eye toward reaching a quicker final remediation plan.

Fueled by her commitment to science and the land, Deschambault pushed back.

“After a little research, I said, ‘Whoa, this is not appropriate for the scientific risk part that we’re in the middle of. How about if we do that during the remedial design?’ And they were, like, ‘No, we have to do this now.’”

Deschambault argued that Atlantic Richfield needed to collect more data and provide quicker access to the data. To her, that’s the part of the process that needed to be “leaned” – getting the data necessary for a decision and making it available for scrutiny as quickly as possible.

She believed Atlantic Richfield wasn’t testing some areas to keep costs down. She also felt Atlantic Richfield was slow-walking requests to share data.

Now, she felt like her bosses were telling her to roll over for Atlantic Richfield in the name of “lean” management principles.

“I told them I don’t think it’s appropriate to try to cut corners on the scientific assessment part,” she recalled. “And they said, ‘It’s already been decided. And we’re going to bring in another (remediation site manager) with some “lean” experience and have a meeting with you and she’s going to take over.’”

Details of these conversations could not be corroborated. Public affairs officers at the agency’s regional headquarters in San Francisco declined to discuss the matter and officials involved in the conversations did not respond to attempts to reach them.

Instead of rolling over, Deschambault said, she became one of some 400 EPA employees who accepted an early retirement package offered to more than 1,228 senior career agency employees in an effort to slash the agency’s workforce. She was replaced, she said, by someone who had worked for 19 years at an environmental engineering consulting firm whose clients included mining companies. That official didn’t respond to inquiries.

BP, in an email reply, said, “We are confident that applying LEAN strategies at Leviathan would accelerate progress on the site and would provide important learnings that could be applied to other sites around the country. Atlantic Richfield is eager to work with the EPA to demonstrate the benefits of a LEAN approach to reach a final remedy that is protective of human health and the environment.”

In early November, Dana Barton, EPA’s regional supervisor for the Leviathan site, traveled from her offices in San Francisco to Gardnerville, Nevada, to meet with representatives of the tribe in its council chambers to explain the “lean” process.

According to several people who participated in the meeting, Barton portrayed the “lean” initiative at Leviathan as arising from an earlier meeting in Washington between Pruitt and representatives of BP. The company wanted to “lean” the site in an effort to facilitate final remedies and Pruitt had agreed, Barton was quoted as saying. Barton didn’t respond to inquiries.

“They weren’t ramming it down our throats,” said one of the local stakeholders. “I was getting ready for that to happen but it didn’t sound like that.” He questioned whether the southwestern regional officials themselves really believed in the approach, saying it sounded like they were being forced to adopt it by officials in Washington.

Nonetheless, he added, he told them “lean” is “a waste of time when we don’t have time to waste.”

In an emailed statement, BP wrote of its subsidiary, “Atlantic Richfield did not discuss the LEAN concept with Administrator Pruitt,” adding instead that “it was initially proposed for Leviathan during a discussion with Region 9” EPA officials, a reference to the southwestern region. BP stressed that ARCO isn’t trying to “avoid or minimize any of the substantive requirements” of the Superfund law.

“The LEAN approach does not result in an outcome that is less protective,” BP said in the statement. “LEAN is about improving process, not changing outcomes. The purpose of LEAN is to streamline activities that are unnecessarily complex or cumbersome in order to reach a beneficial outcome more effectively and efficiently.”

Apparently, that’s not a problem at BP. The company doesn’t use “lean” in its own operations, the company acknowledged in its statement.

Marcus Stern is a Pulitzer Prize-winning journalist who has reported for Copley News Service, ProPublica and The Weather Channel, among other news organizations. He can be reached at marcus.stern@comcast.net.